

23649



New York State Office of Parks, Recreation and Historic Preservation

The Governor Nelson A Rockefeller Empire State Plaza • Agency Building 1, Albany, New York 12238
www.nysparks.com

David A. Paterson
Governor
Carol Ash
Commissioner

September 22, 2008

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

FILED FEE WAIVED

**RE: Buffalo & Pittsburgh Railroad Inc. - Abandonment Exemption- In Erie and
Cattaraugus Counties, New York STB Docket No. AB-369 (Sub-No. 7X)**

Dear Secretary Quinlan:

This request is filed on behalf of the New York State Office of Parks, Recreation and Historic Preservation (Proponent) which is a government agency interested in natural resources, recreation, historic preservation and the conservation of open space. While not taking a position on the merits of this abandonment, Proponent requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment of the rail line between Milepost 8.4 in the Town of Orchard Park, Erie County, New York and Milepost 36 in the Town of Ashford, Cattaraugus County, New York, a total distance of 27.6 miles.

A Request for Public Use Condition

Proponent requests the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms. The justification for this condition is that the rail corridor in question would make an excellent recreational trail and conversion of the property to trail use is widely supported throughout the area. The time period sought is 180 days from the effective date of abandonment authorization. Proponent requires this much time to fully evaluate the rail corridor and to commence negotiations with the carrier.
2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of abandonment authorization for the same reasons as listed above.

B Request for Interim Trail Use

The railroad right-of-way in this proceeding is suitable for rail banking. In addition to the public use conditions sought above, Proponent also makes the following request

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247 (d), and 49 C.F.R. §1152.29, the New York State Office of Parks, Recreation and Historic Preservation is willing, to the extent permitted by law, to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by the Buffalo and Pittsburgh Railroad, Inc. The property extends 27.6 miles from Milepost 8.4 in the Town of Orchard Park, Erie County to Milepost 36 in the Town of Ashford, Cattaraugus County, New York. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB - 369 (Sub No. 7X). A map depicting the right-of-way is attached.

The NYS Office of Parks, Recreation and Historic Preservation acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

In addition, the State respectfully requests a waiver of the Board's filing fees in accordance with 49 CFR 1002.2(e)(1).

By my signature below, I certify service upon Buffalo and Pittsburgh Railroad, Inc., David Collins, President, 1200-C Scottsville Road, Suite 200, Rochester, New York 14624 by U.S. Mail, postage prepaid, first class, on September 22, 2008.

Respectfully submitted,



Erik Kulescid
Deputy Commissioner for Open Space Protection

CC David Collins, President

